BILL NO. S-80-05 -18

SPECIAL ORDINANCE NO. S- 59-80

AN ORDINANCE approving an Agreement with Villas of the Marketplace Co., for construction of a sanitary sewer.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated April 23, 1980, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and Villas of the Marketplace Co., Developer, for:

SANITARY SEWER

Beginning at an existing manhole at the Southeast corner of Lot #8, Villas of the Marketplace, Sec. 1; thence Southwesterly 67 L.F. to a manhole at the Northeast corner of Lot #32, Villas of the Marketplace, Sec. 11; thence South, 161 L.F. to a manhole at the Southeast corner of said Lot #32; thence West, 647 L.F. to a clean out and terminating.

of which the developer shall pay the entire cost and expense of the construction of said sewer, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

COUNCILMAN

APPROVED AS TO FORM AND LEGALITY MAY 13, 1980.

J. E. Hoffman

JOHN E. HOFFMAN
City Attorney

Read the first time in full and on motion by Burns, seconded by Evans, and duly adopted, read the second time by title and referred to the Committee City Utilities (and the City Plan Commission for ~~recommendation~~) and Public ~~Hearing~~ to be held after due legal notice, (at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock ____ M., E.S.T.

DATE: 5-13-80

Charles W. Westerman
CHARLES W. WESTERMAN
CITY CLERK

Read the third ~~time~~ in full and on motion by Burns, seconded by Evans, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9				
BURNS	✓				
EISBART	✓				
GiaQUINTA	✓				
NUCKOLS	✓				
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
SCHOMBURG	✓				
STIER	✓				
TALARICO	✓				

DATE: 5-27-80

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. S-59-80

on the 27th day of May, 19 80.

ATTEST: (SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Vivian G. Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28 day of May, 19 80, at the hour of 11:30 o'clock A. M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 2nd day of June 19 80, at the hour of 10 o'clock A M., E.S.T.

WINFIELD C. MOSES, JR.
MAYOR

BILL NO. S-80-05-18

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS REFERRED AN ORDINANCE Approving an Agreement with Villas of the Marketplace Co., for construction of a sanitary sewer

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

PAUL M. BURNS, CHAIRMAN

BEN EISBART, VICE CHAIRMAN

JOHN NUCKOLS

MARK GiaQUINTA

ROY SCHOMBURG

5-27-80
DATE

CONCURRED IN:
CHARLES W. WESTERMAN, CITY CLERK

69-14-15 H.L. 4/23/80

AGREEMENT FOR SEWER EXTENSION

THIS AGREEMENT, made in triplicate, this 23 day of April 1980, by and between VILLAS OF THE MARKETPLACE CO., an Indiana Limited Partnership, 6417 Georgetown North Boulevard, Fort Wayne, Indiana 46815, hereinafter referred to as "Developer", and the City of Fort Wayne, a Municipal Corporation, hereinafter referred to as "City", WITNESSETH:

WHEREAS, the Developer is developing approximately eight (8) lots and recorded as Villas of the Marketplace, Section II; and

WHEREAS, the Developer is desirous of extending the City Sanitary Sewers to serve said Addition; and

WHEREAS, the Developer has had detailed engineering plans and specifications prepared for the extension of City Santiary Sewers to serve said Addition; and

WHEREAS, the Developer obtained bids on said project and the City and Developer are ready to construct said Sewer commonly known as Villas of the Marketplace, Section II, On-Site Sanitary Sewer, hereinafter referred to as Sewer, and is described as follows:

ON-SITE SANITARY SEWER

Beginning at an existing manhole at the Southeast corner of Lot #8, Villas of the Marketplace, Sec. I; thence Southwesterly 67 L.F. to a manhole at the Northeast corner of Lot #32, Villas of the Marketplace, Sec. II; thence South, 161 L.F. to a manhole at the Southeast corner of said Lot #32; thence West, 647 L.F. to a clean out and terminating.

Said Sewer shall be eight (8) inches in diameter.

Said Sewer to be constructed in accordance with the plans, specifications, and profiles as prepared by Joseph B. Stoody, Jr., L.S., and approved by the Water Pollution Control Engineering Department, and on file at this time in the Office of the Board of Public Works. Said project commonly known as the Villas of the Marketplace, Section II, On-Site Sanitary Sewer, Board Order #191-79. Said plans, specifications and profiles are by reference incorporated herein and made a part hereof.

WHEREAS, the cost of the On-Site Sanitary Sewer is represented to be $18,385.15 ; which is composed of $16,541.25 construction cost, and $1,843.90 engineering cost (including $200.00 attorney fees).

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

The Developer shall cause said Sewer to be constructed and located in accordance with said plans, specifications and profiles on file with the City. All work and materials shall be subject to inspection by the City and right of City to halt construction if there shall be non-compliance therewith. Said Sewer shall not be deemed permanently connected into the sewer system of the City until final acceptance by City. Notwithstanding the above, the Developer may place in service a portion of the project before the entire project is completed, providing said portion is completed in accordance with said plans and specifications. Upon completion, said Sewer shall become the property of City, and City shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be borne by City.

2. COST OF CONSTRUCTION

The Developer agrees to pay the entire cost and expense of construction of said Sewer, in cash, including City engineering and inspection fees, and to hold the City harmless from any liability for claims connected therewith.

3. AREA OF OWNER

Said Sewer, when accepted by the City, will serve the following described real estate which is now owned or under contract purchase by Developer: Lots Numbered 32 through 39, inclusive, in the Villas of the Marketplace, Section II, as recorded in Plat Book 43, Page 90-92. Also the SW 1.13 acres of the NW¼ of the NW¼ of Sec. 20, T31N, R13E.

4. CHARGES AGAINST EXCESS AREA

Said Sewer, when constructed, will serve additional or excess area, identified as "local Area Benefited" on attached Exhibit "A".

5. CHARGE AGAINST LOCAL AREA

Said Sewer, however, also serves a local or excess area as shown on the attached Exhibit "A". In the event any present or future owner of real estate shall at anytime within fifteen (15) years of the date of this Agreement, desire to use said Sewer or any extension thereof, whether by direct tap or through the extension or connection of lateral or local lines to serve such land, City, through its duly constituted authorities, before permitting such use, shall require by contract or assessment, as may be appropriate, that such owner or owners of said local area pay to the City, in addition to the cost of standard tap-in and inspection fees,

the sum of $ 0.06288101/square foot for the area served by each such connection and use, which represents the prorata share of the cost of the extension of the City Sewer to said area. Any amount so collected by the City shall be paid by the City within sixty (60) days of the receipt thereof to the Developer. Developer and City, by and between themselves, mutually agree that Developer may assign its right to receive the reimbursement proceeds if and when collected by the City as called for under this Agreement, provided Developer shall notify the City in writing of such assignment within fifteen (15) days of making same and provided further that such an assignment shall not include an assignment to a receiver or in bankruptcy.

6. LIMITATION ON USE

Said Sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, or any future owner of any land serviced by said Sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water run-off caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

7. CONCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

8. GOVERNING STATUTE

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Section 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17 and I.C. 19-2-7-18), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

9. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION

The Developer, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with, or oppose any pending or future annexation by City of any territory now or hereafter owned by him as described in Article 3 herein, or hereafter served by said Sewer or any extension thereof.

In further consideration and to induce City to execute and ratify this contract, said Developer, for himself, his successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly enacted Ordinance, the said real estate noted in Article 3 herein.

Developer further agrees that any deed, contracts, or other instruments of conveyance made by the Developer, its successors or assigns, transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this Article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the Developer, his successors and assigns, by any grantee, vendee, or contract purchaser and their successors in title.

The Developer further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of the City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the Corporate Limits of City, who connect into the Sewer constructed hereunder, shall be deemed to thereby waive his, her, their or its right to remonstrate against or otherwise object to, interfere with, or oppose any pending or future annexation by City of such land or of the territory in which it is located, or of the area served by said Sewer.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

DEVELOPER:

VILLAS OF THE MARKETPLACE CO.
an Indiana Limited Partnership

BY _____
(Michael W. Thomas) General Partner

* * * *

CITY OF FORT WAYNE

BY _____
(Winfield C. Moses, Jr.)

BOARD OF PUBLIC WORKS

BY _____
(Mark Akers) Chairman

BY _____
(Roberta Anderson Staten)

BY _____
(Herbert R. Gamache)

ATTEST:

_____
(Sandra Kennedy) Clerk

Approved as to form and legality:

_____
(Richard I. Snouffer)
Associate City Attorney

This instrument prepared by EDWARD J. MOPPERT, Attorney at Law.

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, personally appeared VILLAS OF THE MARKETPLACE CO., an Indiana Limited Partnership, by Michael W. Thomas, its General Partner, who acknowledged the execution of the foregoing Agreement for Sewer Extension, as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal, this 25th day of March, 1980.

Edward J. Moppert
EDWARD J. MOPPERT
Notary Public of Allen County

My Commission Expires:

Sept. 4, 1983

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, personally appeared WINFIELD C. MOSES, JR., Mayor; MARK AKERS, Chairman of the Board of Public Works; ROBERTA ANDERSON STATEN and HERBERT R. GAMACHE, Members of the Board of Public Works; and SANDRA KENNEDY, Clerk of the Board of Public Works, who acknowledged the execution of the foregoing Agreement for Sewer Extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal, this _____ day of March, 1980.

Notary Public of Allen County

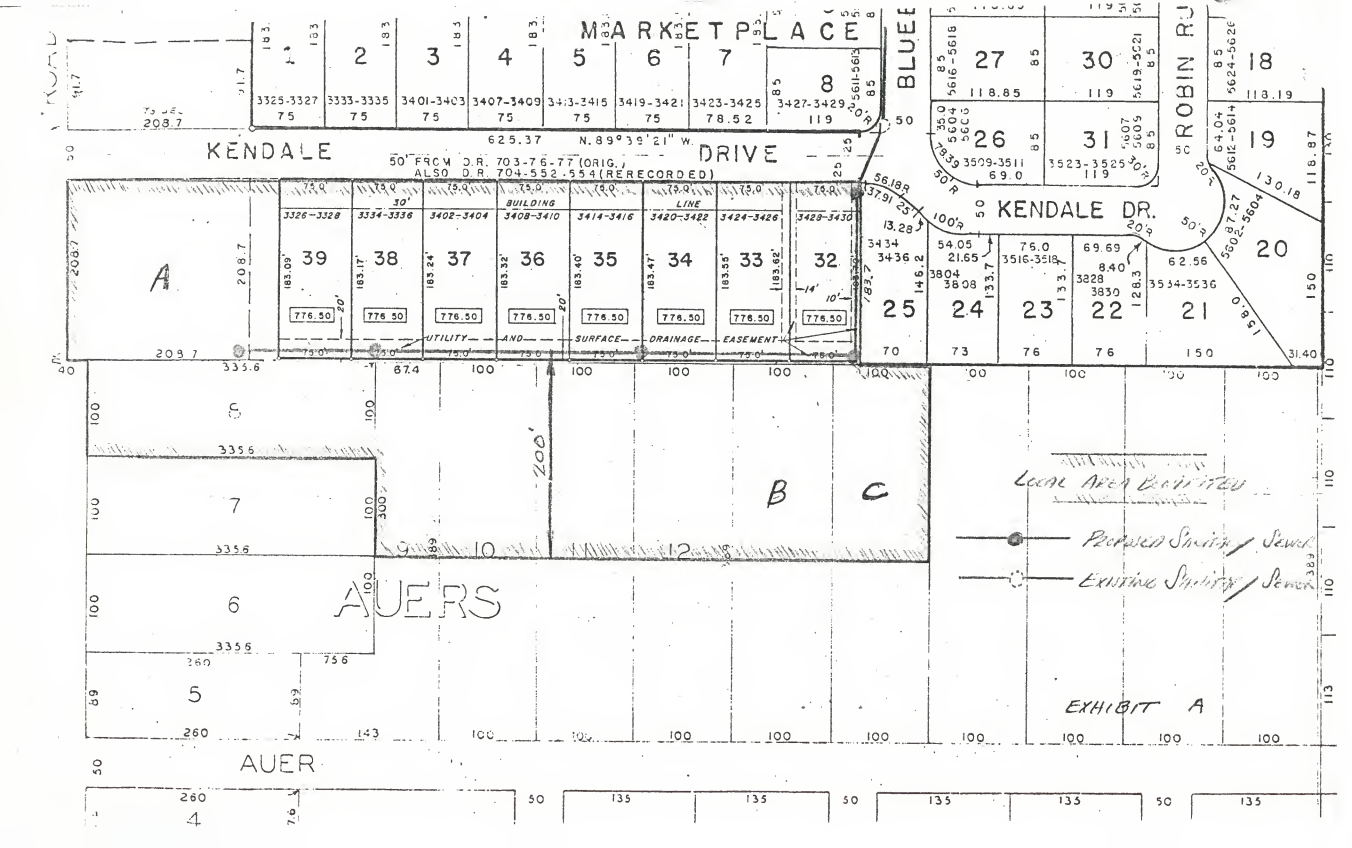
My Commission Expires:

EXHIBIT "A"

Lots 8, 9, 10, 11 and 12 Auer's Addition to the City of Fort Wayne, shown in Plat Book 19, Page 40, along with the following described real estate:

The East 100.0 feet of the West 903.0 feet of the North 389.0 feet of the Southwest quarter of the Northwest quarter of Section 20, Township 31 North, Range 13 East, in Allen County, State of Indiana,

AND ALSO
The East 100.0 feet of the West 803.0 feet of the North 389.0 feet of the Southwest quarter of the Northwest quarter of Section 20, Township 31 North, Range 13 East, Allen County, State of Indiana.


MARKETPLACE
KENDALE DRIVE
KENDALE DR.
BLUEE
ROBIN RD
AUERS
AUER
50' FROM D.R. 703-76-77 (ORIG.)
ALSO D.R. 704-552-554 (RERECORDED)
625.37
N.89°39'21" W.
BUILDING LINE
UTILITY AND SURFACE DRAINAGE EASEMENT
A
B
C
Local Area Boundary
Proposed Sanitary Sewer
Existing Sanitary Sewer
EXHIBIT A

BENEFITTED AREA	AREA IN SQ. FEET	PROPERTY OWNERS	LOCAL SEWER EXT. COST PER SQ. FT.	LOCAL SEWER EXT. COST PER P.O.	AREA CONNECTION FEES $580/acre	PROJECT COST TO1. PROP. OWNER 5 & 6
LOTS 32-39 INCLUSIVE & "A"	149,340	VILLAS OF THE MARKET-PLACE CO.	.062881011	9390.65	NA	9390.65
LOT 8	29,560	EDWARD J. & RENEE A. CARR	.062881011	1858.76	393.59	2252.35
LOT 9	13,480	MACK A. & PAMELA J. SHERMAN	.062881011	847.64	179.48	1027.12
LOT 10	20,000	LYNN R. & LAURA S. WEAVER	.062881011	1257.62	266.30	1523.92
LOT 11	20,000	RONALD D. & MARY A. GROVE	.062881011	1257.62	266.30	1523.92
LOT 12	20,000	AUDREY JEAN WALL	.062881011	1257.62	266.30	1523.92
"B"	20,000	MICHAEL L. & MARTHA L. PERRIGUEY	.062881011	1257.62	266.30	1523.92
"C"	20,000	PAUL W. & MABEL K. BARKDULL	.062881011	1257.62	266.30	1523.92
TOTAL	292,380			TOTAL COST OF SEWER	CONSTRUCTION	16,541.25
					ENGINEERING	1,843.90
					TOTAL	18,385.15

THE ABOVE STATED LOCAL CHARGES DUE BY VILLAS OF THE MARKETPLACE CO. ARE HEREBY WAIVED.

Michael W. Thomas 4-7-80

EXHIBIT A

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXTENSION - VILLAS OF THE MARKETPLACE, SEC. II

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-80-05-18

SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION FOR VILLAS OF THE MARKETPLACE, SECTION II WITH VILLAS OF THE MARKETPLACE CO., DEVELOPER, FOR THE CONSTRUCTION OF AN ON-SITE SANITARY SEWER TO SERVE VILLAS OF THE MARKETPLACE, SECTION II AREA.

(AGREEMENT ATTACHED)

EFFECT OF PASSAGE CONSTRUCTION OF ON-SITE SANITARY SEWER TO SERVE ABOVE-DESCRIBED AREA

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER TO PAY ENTIRE COST AND EXPENSE OF CONSTRUCTION OF SAID SEWER

ASSIGNED TO COMMITTEE

EP